



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35572]

Pennsylvania & Southern Railway, LLC—Acquisition, Lease and Operation  
Exemption—CSX Transportation, Inc.

Pennsylvania & Southern Railway, LLC (PSCC), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to: (1) acquire from CSX Transportation, Inc. (CSXT) and operate the improvements comprising a 2.5-mile line of railroad between milepost BAV 22.4 and milepost BAV 24.9 near Chambersburg, Franklin County, Pa., and lease the underlying real property from CSXT; and (2) lease from CSXT and operate the improvements comprising a 1.95-mile line of railroad between milepost BAV 24.9 and milepost BAV 26.85 near Chambersburg, and lease the underlying real property from CSXT.<sup>1</sup>

On December 6, 2011, PSCC filed a supplement to its verified notice of exemption to clarify certain aspects of the proposed transaction and the Board authority sought pursuant to the verified notice.<sup>2</sup>

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<sup>1</sup> PSCC states that it is also leasing from CSXT the tracks and underlying real property comprising the Chambersburg Yard, which contains approximately 12,000 feet of track, but further states that the acquisition of this yard track does not require Board authorization.

<sup>2</sup> Also on December 6, 2011, PSCC filed a motion for protective order, which will be addressed in a separate decision. On December 7, 2011, PSCC submitted under seal an unredacted draft of its Land Lease and Purchase of Rail Improvements Agreement (Agreement) with CSXT. See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc., FD 35296, slip op. at 3-4 (STB served Aug. 31, 2010).

With respect to the 2.5-mile segment on which PSCC intends to purchase the improvements and lease the underlying real property from CSXT, PSCC asserts that CSXT does not wish to retain any common carrier obligation and will transfer its full common carrier obligation to PSCC together with the tracks, ties, and other track materials. Because PSCC will lease both the improvements and the underlying real property from CSXT on the 1.95-mile segment, CSXT will retain a residual common carrier authority on that segment.

PSCC certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed \$5 million.

The earliest this transaction may be consummated is January 5, 2012, the effective date of the exemption (30 days after the exemption was filed).<sup>3</sup> In its supplemental filing, PSCC states that, after the verified notice was filed, the parties agreed to defer the closing date and commencement of operations by PSCC until February 3, 2012.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 29, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35572, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington,

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<sup>3</sup> PSCC's verified notice of exemption is deemed to have been filed on December 6, 2011, the date PSCC filed its supplement.

DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

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Decided: December 14, 2011

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Clearance Clerk

Raina S. White

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